

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

ORIGINAL

In re:

Amendment of Section 73.622(b)  
Table of Allotments  
DTV Broadcast Stations  
(Fayetteville, Arkansas)

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)  
)  
)

MM Dkt. No. 01-55  
RM-10034

RECEIVED

MAY 13 2003

To: Chief, Television Branch  
Video Services Division

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**JOINT MOTION FOR APPROVAL OF SETTLEMENT**

Arkansas Educational Television Commission ("AETC"), Fort Smith 46, Inc., a subsidiary of Equity Broadcasting, Inc. ("Fort Smith") and Victory Communications, Inc. ("Victory") (collectively the "Parties"), hereby submit this Joint Motion for Approval of Settlement and request that the Federal Communications Commission ("Commission"): (1) approve the Settlement Agreement appended hereto; (2) grant AETC's Petition for Rulemaking to change the allotted DTV Channel of Station KAFT-DT, Fayetteville, Arkansas from Channel \*45 to Channel \*9; (3) grant Fort Smith's amended application for minor changes to Station K68ET, Fort Smith, Arkansas (FCC File No. BPTTL-20021108AAK, as amended) (the "Amended Fort Smith Application"); (4) dismiss Victory's pending application for displacement of Class A Station K45EI, Bentonville and Rogers, Arkansas (FCC File No. BMJPTTA-20030113AAB); and (4) dismiss the pending Opposition filed by Fort Smith against the AETC Petition to change KAFT-DT's Channel.

In support thereof, the following is shown:

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List A B C D E

1. The Parties have worked together to find engineering resolutions to the conflicts raised in this proceeding, so that AETC's Petition and the Amended Fort Smith Application can

be granted expeditiously, thereby avoiding any need for a channel change for Class A Station K45EI, Bentonville and Rogers, Arkansas. Specifically, Victory agreed to dismiss its pending modification application for Station K45EI (to change to Channel 32); Fort Smith agreed to withdraw its objection to the KAFT-DT Channel change due to the displacement of Station K09XE in exchange for a payment by AETC to help defray displacement costs for Fort Smith's Station K09XE and to prosecute an amendment to its pending application for Station K68ET; and AETC agreed to pay the sum of One Hundred Thirty Thousand Dollars (\$130,000) to Fort Smith to help defray the K90XE displacement costs.

2. The Parties agree that, absent a settlement, the resolutions of the Petition, the Opposition and the various applications are likely to be protracted, expensive, subject to administrative delay and uncertainty, and a burden upon the Parties' and the Commission's resources, as well as delaying DTV and other improved television service in the Fayetteville and Fort Smith areas.

3. The Parties have executed a Settlement Agreement, a copy of which is attached as Attachment A. The crux of the Settlement Agreement is the three-way arrangement that results in each Party having a viable channel to use in the Fayetteville/Fort Smith area (i.e., KAFT-DT uses DTV Channel \*9, Fort Smith uses Channel 32 for K68ET, and Victory remains on Channel 45.)

4. The public interest, convenience, and necessity will be well served by granting AETC's Petition and the Amended Fort Smith Application, because scarce resources of the Parties (one of which is a state governmental entity and a noncommercial educational TV licensee) and of the Commission will be preserved and because new DTV and improved broadcast service to the area

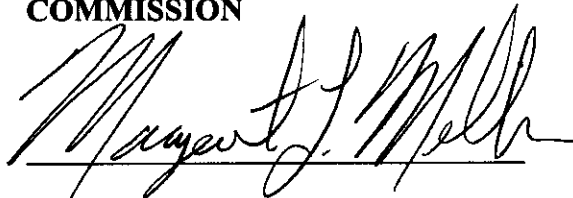
will commence at the earliest possible time. Thus, this settlement well serves the purposes of the Communications Act of 1934, as amended.

5. The agreements of each of the parties to the settlement are contingent upon grant of all the relief requested, including both approval of AETC's allotment change and Fort Smith's displacement application. Accordingly, it is requested that the Commission expedite the proceeding of both transactions and approve them at or about the same time.

6. For the foregoing reasons, we respectfully request approval of the attached Settlement Agreement, the grant of AETC's Petition, grant of the Amended Fort Smith Application, dismissal of Victory's displacement application to change K45EI to Channel 32 and withdrawal of Fort Smith's Objection to AETC's Petition.

Respectfully submitted,

**ARKANSAS EDUCATIONAL TELEVISION  
COMMISSION**

A handwritten signature in cursive script, appearing to read "Margaret L. Miller", written over a horizontal line.

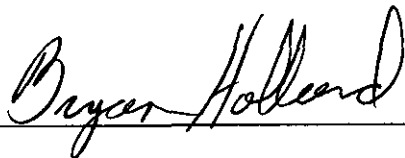
By: Margaret L. Miller  
Its Attorney

**FORT SMITH 46, INC.**

A handwritten signature in cursive script, appearing to read "Michelle A. McClure", followed by "(by MM)" in parentheses, written over a horizontal line.

By: Peter Tannenwald  
Michelle A. McClure  
Its Attorneys

**VICTORY COMMUNICATIONS, INC.**

  
By: Bryan Holland  
Its: President

May 13, 2003

## **KAFT-DT SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made as of April 15, 2003, by and among Arkansas Educational Television Commission ("AETC"), Fort Smith 46, Inc., a subsidiary of Equity Broadcasting, Inc. ("Fort Smith"), and Victory Communications, Inc. ("Victory") (collectively, the "Parties").

WHEREAS, AETC is the licensee of Station KAFT-TV, NTSC Channel 13 and permittee of Station KAFT-DT, DTV Channel 45, Fayetteville, Arkansas;

WHEREAS, AETC petitioned the FCC on May 9, 2000 to change the allotted DTV Channel of Station KAFT-DT from Channel 45 to Channel 9 (NPRM released February 22, 2001) (the "KAFT DTV Channel Change");

WHEREAS, Victory is the licensee of LPTV Station K45EI, Bentonville and Rogers, Arkansas and has a pending application for a displacement construction permit to change K45EI to Channel 32 (FCC File No. BMJPTTA-20030113AAB) based on the allotment of DTV Channel 45 to KAFT-DT.

WHEREAS, Fort Smith is the licensee of Class A Station K09XE, Winslow, Arkansas and the licensee of Station K68ET, Fort Smith, Arkansas;

WHEREAS, Pharis Broadcasting, Inc., predecessor in interest to Fort Smith, filed Comments opposing the KAFT DTV Channel Change;

WHEREAS, the Parties desire that KAFT-DT's DTV allotment be changed to DTV Channel 9, that the facilities of K09XE be modified to another channel, and that K45EI be permitted to remain on Channel 45; and

WHEREAS, the Parties believe that this Agreement serves the public interest because it furthers a more efficient use of television spectrum, conserves the resources of the parties and speeds resolution of the KAFT DTV Channel Change as well as KAFT-DT's activation.

NOW THEREFORE, in consideration of the mutual promises made herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Withdrawal of Opposition and K68ET Application.** Contingent upon Approval of this Settlement Agreement, Fort Smith hereby withdraws its Opposition to the KAFT DTV Channel Change, it being expressly understood and agreed among the Parties that Fort Smith will pursue a displacement application for K09XE on its own. Within seven (7) days of the execution date of this Agreement, Fort Smith shall submit to AETC and Victory for their review an amendment seeking to modify the pending application for Station K68ET in FCC File No. BPTTL-20021108AAK to specify operation on Channel 32 at Winslow, Arkansas (the "Amended K68ET Application"), it being expressly understood and agreed among the Parties that (i) grant of the Amended K68ET Application requires dismissal of Victory's Channel 32 displacement application in FCC File No. BMJPTTA-20030113AAB; and (ii) this settlement is contingent upon grant of the "Amended K68ET Application." Fort Smith shall file the Amended K68ET Application with the FCC within two (2) business days after approval of the Amended K68ET Application by both AETC and Victory. If Victory does not respond with approval or objection

within seven (7) days, AETC and Fort Smith may presume approval by Victory, and Fort Smith shall file the Amended K68ET Application with the FCC after approval by AETC. In the event that AETC and/or Victory provide notice to Fort Smith of any objection to the Amended K68ET Application based on any defect or issue that could reasonably be expected to result in the denial or delay in the grant of the Amended K68ET Application, Fort Smith shall immediately, at its own expense, cure such defects or resolve such issues to the reasonable satisfaction of AETC and/or Victory. In the event that Fort Smith has not cured such defects or resolved such issues within five (5) business days from receipt of objection by AETC, AETC shall have the right to terminate this Agreement.

2. **Dismissal of Channel 32 Application/Surrender of Channel 32 Permit.**

Contingent upon approval of this Settlement Agreement, Victory hereby dismisses its application for Channel 32 (FCC File No. BMJPTTA-20030113AAB) or, if the FCC has already granted Victory a permit for Channel 32, Victory hereby surrenders that permit.

3. **Financial Consideration.** As consideration for this Agreement, AETC shall pay to Fort Smith the sum total amount of One Hundred Thirty Thousand Dollars (\$130,000.00), or such lesser amount approved by the Commission pursuant to Section 73.3525 of the FCC rules, to defray the costs of a displacement permit for K09XE, inclusive of legal and engineering fees incurred by Fort Smith. AETC shall make its payment to Fort Smith within thirty days (30) days of the FCC taking "Final Action," as defined below, approving this Agreement and granting the KAFT DTV Channel Change.

4. **Request for FCC Consent.** As soon as possible, but in no event later than five (5) days after execution of this Agreement, the Parties hereto shall file a Joint Request for Approval of Settlement Agreement (the "*Joint Request*"), as required by Section 73.3525 of the FCC's rules, requesting that the FCC issue an order or orders: (i) granting the Joint Request; (ii) approving this Agreement; (iii) granting AETC's Petition; (iv) dismissing Victory's application (or canceling Victory's construction permit, as the case may be) for Channel 32; and (v) granting the Amended K68ET Application.

5. **Cooperation.** No Party shall take any action adverse to this Agreement, the actions contemplated herein, the Joint Request, the KAFT DTV Channel Change or the Amended K68ET Application. Recognizing that this Agreement is expressly subject to the prior consent of the Commission and the need for Commission approval prior to its consummation, the Parties shall cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be necessary or appropriate to effectuate this Agreement and to comply with Section 73.3525 of the Commission's Rules. The Parties agree to provide the Commission in a timely manner with such information as it reasonably requires or requests. The Parties further agree to use their best efforts in the preparation and filing of all Commission applications and related documents that may be necessary or appropriate to reach the result contemplated by this Agreement. Except as otherwise specified herein, each party shall bear its own expenses for the preparation of this Agreement and all supporting documents.

6. **Final Action.** The obligations of the Parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" approving this Agreement in its entirety, granting the KAFT DTV Channel Change and the Amended K68ET Application. For purposes

of this Agreement, an action by the FCC approving this Agreement or granting the KAFT DTV Channel Change or the Amended K68ET Application shall be deemed a "Final Action" when the time for filing any requests for administrative or judicial review of such action, or for the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been filed or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.

7. **Authorization and Binding Obligation.** The Parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

8. **Termination.** This Agreement may be terminated by mutual written agreement of the Parties. This Agreement shall terminate if the FCC denies the Joint Request and such denial becomes a Final Action. In the event the FCC has not approved this Agreement and the KAFT DTV Channel Change and the Amended K68ET Application within two (2) years of the Effective Date, then any Party may terminate the Agreement upon notice as set forth in paragraph 9 below.

9. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows:

If to AETC:

Allen Weatherly  
Executive Director  
Arkansas Educational Television Network  
350 S. Donaghey  
P.O. Box 1250  
Conway, AR 72032

With a copy (which shall not constitute notice) to:

Margaret L. Miller, Esq.  
Dow Lohnes & Albertson, P.L.L.C.  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036-6802

If to Fort Smith:

Larry Morton  
President  
Equity Broadcasting Corporation  
One Shackleford Drive  
Suite 400  
Little Rock, AR 72211-2545

With a copy (which shall not constitute notice) to:

Peter Tannenwald, Esq.  
Irwin, Campbell & Tannenwald  
1730 Rhode Island Ave., N.W.  
Suite 200  
Washington, DC 20036-3101

If to Victory:

Brian Holland  
President  
Victory Communications, Inc.  
P.O. Box 177  
Centerton, Arkansas 72719

10. **Entire Agreement.** Except as otherwise set forth herein, this Agreement constitutes the entire understanding of the Parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both Parties.

11. **Enforcement.** Should the Parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs, as shall be determined by the court. The Parties recognize that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, without limiting any other remedies available to any Party under law or equity, the Parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and hereby waive any defense that there is an adequate remedy at law for breach of this Agreement, and hereby waive any requirement for a bond in connection with such specific performance or other equitable relief.

12. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their heirs, successors, executors, legal representatives and assigns, provided, however, that no Party may voluntarily assign this Agreement without the express written consent of the other Parties, such consent not to be unreasonably withheld if the assignee is a successor licensee of KAFT, K09XE, or K45EI.

13. **Governing Law.** This Agreement shall be construed to be consistent with the Communications Act of 1934, as amended, and the rules and regulations of the FCC and shall



otherwise be governed by and construed in accordance with the laws of the State of Arkansas without application of conflicts of laws principles. The Parties agree to accept the jurisdiction of the courts of the State of Arkansas for the resolution of any disputes under this Agreement.

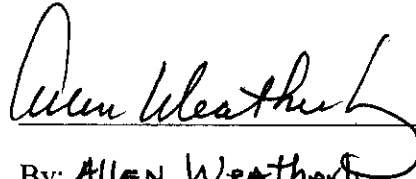
14. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

15. **Counterparts.** This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the Parties. Signatures transmitted via facsimile have the same effect as originals and are legally binding.

(The remainder of this page is left blank intentionally.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

**ARKANSAS EDUCATIONAL TELEVISION  
COMMISSION**

  
By: *Allen Weatherly*  
Its: *Executive Director*

**FORT SMITH 46, INC.**

\_\_\_\_\_  
By:  
Its:

**VICTORY COMMUNICATIONS, INC.**

\_\_\_\_\_  
By:  
Its:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

**ARKANSAS EDUCATIONAL TELEVISION  
COMMISSION**

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By:  
Its:

**FORT SMITH 46, INC.**

*Larry E. Morton*

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By: *LARRY E. MORTON*  
Its: *President*

**VICTORY COMMUNICATIONS, INC.**

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By:  
Its:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

**ARKANSAS EDUCATIONAL TELEVISION  
COMMISSION**

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By:  
Its:

**FORT SMITH 46, INC.**

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By:  
Its:

**VICTORY COMMUNICATIONS, INC.**



By:  
Its:

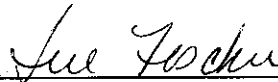
**CERTIFICATE OF SERVICE**

I, Sue Fischer, hereby certify that a copy of the foregoing "Joint Motion for Approval of Settlement" was served this 13th day of May 2003, by first class United States mail, postage prepaid, upon the following:

Clay Pendarvis  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Peter Tannenwald, Esq.  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., N.W., Suite 200  
Washington, DC 20036-3101

Brian Holland  
Victory Communications, Inc.  
President  
P.O. Box 177  
Centerton, Arkansas 72719



Sue Fischer